

STATE OF MINNESOTA
IN COURT OF APPEALS

In Re the Marriage of:
Lana Susan Higgins,

Respondent,

and

Warren Nau Higgins, Jr.,

Appellant.

**FINDINGS AND
DETERMINATION**

C8-97-739

The above-captioned matter came on before Administrative Law Judge George A. Beck, acting as a special referee of the Minnesota Court of Appeals for the purpose of making findings on the Appellant's eligibility for proceeding *in forma pauperis* in accordance with Minn. Stat. § 563.01, subd. 3, and whether or not the appeal is of a frivolous nature.

Warren Nau Higgins, Jr. represented himself. James M. Crow, Assistant County Attorney, represented Dakota County Financial Services. Mark A. Carter, Esq., represented Lana Susan Higgins.

Written submissions were accepted from the parties on or before May 27, 1997, and a telephone conference was held on May 29, 1997, at 10:30 a.m.

Based upon the oral argument, the written submissions and the record in this matter, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Appellant is a self-employed insurance broker and has no salaried income. He earns commissions based upon his sales.

2. Pursuant to the parties Judgment and Decree dated July 6, 1994, the Appellant was ordered to pay child support pursuant to Minn. Stat. § 518.551, subd. 5, for the parties two children in the amount of \$462.90 per month, based upon a monthly net income of \$1,543.00. At the time of the entry of the Order, the Appellant was also self employed as an insurance broker.

3. The Appellant's 1996 federal tax return shows total income of \$2,275.00 and a taxable income of \$0. (Ex. CR 7.)

4. The 1997 federal poverty guideline for one person is \$7,890.00. 125 percent of the federal poverty guideline is \$9,862.50.

5. The Appellant's debts amounted to \$112,390.00 in April of 1997, and \$67,107.00 in October of 1995. (Ex. P-9.)

6. The Appellant has previously been granted *in forma pauperis* status as follows:

Dakota County District Court	April 24, 1997
Minnesota Supreme Court	March 13, 1996
Tax Court	January 23, 1996
Minnesota Court of Appeals	November 20, 1995
Dakota County District Court	October 13, 1995

7. In this appeal, the Appellant contests the suspension of his drivers license due to a failure to pay child support, on due process and other grounds. (Ex. CR 5.)

8. The Appellant's driving privileges have been suspended since February 14, 1997, which has impacted his ability to work and to have visitation.

Based upon the foregoing Findings of Fact, the Referee makes the following:

CONCLUSIONS OF LAW

1. The Appellant's income does not exceed the federal poverty guideline, and therefore does meet the criteria for *in forma pauperis* status as set forth in Minn. Stat. § 563.011, subd. 3.

2. The Appellant's appeal is not of a frivolous nature.

Based upon the foregoing Findings of Fact and Conclusions of Law, the Referee makes the following:

DETERMINATION AND RECOMMENDATION

1. Appellant's motion seeking permission to proceed *in forma pauperis* should be granted.

2. The Appellant's appeal is not of a frivolous nature.

3. Appellant's motion for a stay of the suspension of his drivers license pending appeal is denied.

4. A copy of this Determination and Recommendation shall be served upon the parties by mail at the following addresses:

Warren Nau Higgins, Jr.
3840 Ballantrae Road, #10
Eagan, Minnesota 55122

James M. Crow
Assistant County Attorney
Dakota County Judicial Center
Hastings, Minnesota 55033

Mark A. Carter, Esq.
33 South 10th Avenue, Suite 110
Hopkins, Minnesota 55343

Dated this 30th day of May 1997.

GEORGE A. BECK
Administrative Law Judge

MEMORANDUM

The Court of Appeals directed that a determination be made as to whether this is a frivolous appeal and whether the Appellant is financially able to pay the expenses of the appeal. The Appellant also moved the ALJ for a stay of the January 9, 1997 Order pending appeal, because of the observation by the Court of Appeals that a motion to that court was premature since no application had been made to the trial judge. Under Minn. Rule 62.02, the trial court may stay proceedings upon appeal. **David W. Volkman Const. v. Issacs**, 428 N.W.2d 875, 876 (Minn. App. 1988). The Respondent argues that a stay would undermine the legislative intent in allowing suspension of driving privileges for a failure to pay child support. The County points out that the Court of Appeals has raised several questions about this appeal which must be resolved before it can proceed. The ALJ agrees that given the evident statutory intent and present procedural posture of this case, any stay should be granted by the Court of Appeals under Rule 107 and 108.

G.A.B.